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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1238 OF 1995

The National Small Industries Corporation Limited ... Plaintiffs

versus

Sudhir Chede ... Defendant

Sonali Shinde i/by Consulta Juris for plaintiffs.

None for defendant.

CORAM : A.M.KHANWILKAR, J.

DATE : 25th July 2007

PC :

1. None appears for the defendant though served. No written statement has been filed on behalf of the defendant. This suit is placed under caption "undefended suit" for hearing in terms of order dated 10th August 2000.

2. In substance, the claim of the plaintiff is in relation to hire purchase agreement executed between the parties dated 1st December 1982. According to the plaintiff, the defendant is

liable to pay a sum of Rs.4,57,389/- towards arrears of hire purchase instalments. In spite of repeated reminders, as the defendant did not pay the amount, the plaintiffs have approached this Court by way of present suit claiming following reliefs :-

> "(a) That it be declared that the hire purchase agreement dt.1.12.1982 being Ex.A hereto, has been duly and validly terminated and that the defendant has no rights, title claims or interest of whatsoever nature in or over the aforesaid machinery described in Schedule I of the hire purchase agreement.
>
> (b) That the defendant be ordered and decreed to pay to the plaintiffs a sum of Rs.4,57,389/- being arrears of Hire Purchase instalments payable by defendant to plaintiffs together with interest @ 16 1/2% on Rs.2,20,209/- from the date of suit till the date of payment.
>
> (c) That the defendants be ordered to hand over to the plaintiffs the machinery described in Schedule I of the hire purchase agreement dt.1.12.1982 being Ex.A to the plaint.
>
> (d) That in the alternative to prayer (c) above and in the event of the defendants not being able to deliver the machinery to the plaintiffs in the same condition in which the same was delivered (subject to normal wear) the defendants be ordered and decreed to pay to the plaintiffs a sum of Rs.50,426/- (Rupees fifty thousand four hundred twenty six only) as per particulars of claim annexed hereto together with interest @ 16 1/2% p.a. from the date of suit till the date of payment.
>
> (e) That the said machinery described in

Schedule I of the Hire purchase agreement dt.1.12.1982 being Ex.A hereto be sold by an order and directions of this Hon'ble Court by private treaty or by public auction and the sale proceeds be paid over to the plaintiffs towards the satisfaction of the plaintiff's claim.

(f) That in the event of the sale proceeds of the hired machinery be insufficient to satisfy the plaintiffs' claim, the defendants be ordered to pay to the plaintiffs the short fall or deficiency of their claim in the suit.

(g) That pending final hearing and disposal of this suit, the court Receiver, High Court, Bombay or some other fit and proper person be appointed Receiver of the hired machinery (described in Schedule I of Ex.A hereto) with all powers under Order XL Rule I of the Civil Procedure Code, 1908 including the power to sell the same by private treaty or public auction and to hand over to the plaintiffs the net sale proceeds thereof towards the satisfaction of plaintiffs' claim in the suit.

(h) That pending final hearing and disposal of the suit, the defendants by themselves, their agents, and servants be restrained by an order of injunction of this Hon'ble Court from dealing with, disposing of encumbering or in any way alienating or transferring the hired machinery (described in Schedule I of Ex.A) or any part thereof.

(i) Ad-interim reliefs in terms of prayer (g) and (h) above.

(j) The plaintiffs be awarded the costs.

(k) For such further and other reliefs as this Hon'ble Court may deem fit and proper."

3. As mentioned earlier, none appears for the defendant nor any written statement has been

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filed. On the other hand, the plaintiffs have filed affidavit of evidence and documents. Indeed, the plaintiff has produced xerox copies of the original documents duly attested by the Branch Manager as true copies. In the affidavit of evidence it is stated that the original documents have been mis-placed in the office and the copies now produced as true copies, were made available on the basis of xerox copies of the said documents available in the Court. Suffice it to observe that the claim set up by the plaintiff in the plaint is reiterated in the affidavit in evidence which is supported by documents produced on record by the plaintiff. From the statement of account it is seen that the defendant became liable to pay a sum of Rs.4,57,389/- in terms of the hire purchase agreement. He was in arrears of instalments for which reason would be liable to pay interest at the agreed rate of 16.5% p.a. on principal amount of Rs.2,20,209/-. The defendant obviously has no intention to contest the proceedings as there is no plausible explanation available with him to counter the case made out by the plaintiff. The claim of the plaintiff is founded on the documents which are produced on record. In the circumstances, in exercise of powers under

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Order VIII, Rule 10 of the Code of Civil Procedure, 1908, I proceed to pass the following order.

4. ORDER :-

(a) The suit is decreed in terms of prayer clauses (a), (b), (c), (e) and (f) with costs;

(b) The decree be drawn up accordingly.

(A.M.KHANWILKAR, J.)